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**From:** Milton, Laura [Milton.Laura@epa.gov]  
**Sent:** 1/26/2021 9:22:55 PM  
**To:** Badalamente, Mark [Badalamente.Mark@epa.gov]  
**Subject:** FW: Excepted Service Draft Bulletin

Fyi, it's probably my fault that they weren't looped in. I didn't even think to share the draft bulletin when it was received. R1 did provide regional comments but not from all of the ORCs.

Kraig, Marvin and I met this morning to clarify some portions of the OHR draft but Elyana lays out several concerns below, some around the law clerks and just some general malaise around the classification coming back to OECA/OGC and the sense that the qualifications are overly prescriptive. I don't think the last two can be addressed but I did tell her to send to Loretta and I forwarded to Marvin. I think they're trying to finish this up this week.

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**From:** Sutin, Elyana <Sutin.Elyana@epa.gov>  
**Sent:** Tuesday, January 26, 2021 3:32 PM  
**To:** Milton, Laura <Milton.Laura@epa.gov>  
**Subject:** RE: Excepted Service Draft Bulletin

Thanks Laura! I understand as well that Region 1 sent in comments; however, they are lead region for HRO. The ORCs did not get to review those comments. Region 8 HRO did not reach out to me to let me know about the bulletin. This is true for most of the ORCs. We are shooting in the dark here a bit.

Elyana

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**From:** Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>  
**Sent:** Tuesday, January 26, 2021 1:26 PM

**To:** Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>; Lattimore, Kraig <[lattimore.kraig@epa.gov](mailto:lattimore.kraig@epa.gov)>

**Subject:** RE: Excepted Service Draft Bulletin

I think you should share with Loretta and I'll forward these to Marvin Shulman as well. I believe that the regions did send in a substantial set of comments through R1 so I assumed you were included in that review. I didn't even think to send the draft bulletin. I'm sorry.

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**From:** Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>

**Sent:** Tuesday, January 26, 2021 2:54 PM

**To:** Lattimore, Kraig <[lattimore.kraig@epa.gov](mailto:lattimore.kraig@epa.gov)>; Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>

**Subject:** RE: Excepted Service Draft Bulletin

**Importance:** High

Laura and Kraig,

Thanks for looping me in. The ORCs were given no opportunity to review this bulletin. We learned of it last Wednesday during a DRC call when one of the DRCs happened to hear about it from their HRO. I can tell you the ORCs are very concerned about the lack of communication and the intent/impact of this bulletin. Since we are in the dark, we are making comments from a place of inadequate information. Here is what the regions have asked me to send as lead region:

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The ORCs were not notified about the 12/14/20 Excepted Service Draft Bulletin until 1/20/21 or given any opportunity to provide input in advance. After a very quick review, the Deputy Regional Counsels, through lead region, have significant concerns related to some of the provisions dealing with attorneys and law clerks in the Bulletin. They are as follows:

*Definition:*

(h) *Law Clerk Trainees:* temporary excepted services positions limited to graduates of recognized law schools or persons having equivalent experience.

**This definition does not comport with how ORCs hire some law clerks. In many instances, our law clerks are law students who have not yet graduated from law school. In particular, if a law student is paid by the agency through Pathways or some other means, this language would be problematic.**

*Roles and Responsibilities*

(d) Office of General Counsel and Office of Enforcement and Compliance Assurance

(1) Will classify attorney positions in accordance with the provisions of 5 U.S.C. 51, 5 CFR 511 and EPA Delegation 1-69, Classification of Attorney Positions Within the Office of General Counsel and Enforcement and Compliance Assurance.

(2) Will ensure staff who classify attorney positions have the necessary classification knowledge and experience for this duty and adhere to applicable statute and regulation.

**The ORCs recommend clarification that classifying ORC attorney positions will return to OECA and OGC as recommended to Donna Vizian in the July 8, 2020 Memo from Larry Starfield, Jim Payne and Debra Thomas. (see attached memo)**

*Attorneys and Law Clerks*

- (a) Attorney and law clerk trainee positions can only be filled by excepted appointment. Applicants may compete for a position by following the instructions in the recruitment notice for the position (please refer to section V(b) regarding notices for employment opportunities)

**The ORCs recommend reference to the memo and SOP that sets forth the agreement with the SSCs on using USAJOBS for Attorney Announcements (see attached memo)**

(d) Minimum Required Qualifications

(1) Law clerks: must possess a J.D. degree or equivalent apprentice experience as allowed per state law.

(2) Attorneys: must possess a J.D. degree or equivalent apprentice experience, be duly licensed and authorized to practice as an attorney under the laws of any state, territory of the United States, or the District of Columbia, and be an active member of the bar in good standing.

**As previously stated, law clerks are often still in law school and do not have a J.D. before coming to work in the Agency. As to those types of law clerks, the above requirement would be a change and would preclude many potential applicants. Please explain the rationale for this requirement. In addition, there is no definition of “equivalent apprentice experience as allowed per state law.” It is not clear how the regions should apply this criteria and may not be achievable for most law clerks in law school.**

(e) Minimum Grade Specific Qualifications

To qualify at the GS-11 grade level, applicants must have an LL.M degree or at least one year of post J.D. legal experience with specialized experience at, or equivalent to, the GS-9 grade level.

**The ORCs have significant concerns with the drafted grade qualifications, which would represent a major change. The regions do not bring in attorneys at the GS-9 level. When we hire someone fresh out of law school or who has less than one year of legal experience, we bring them on at the GS-11 level. After one year, they are eligible for a GS-12; after two years, GS-13; after three years, GS-14. This is the standard career ladder for EPA attorneys, and has been the case for many years. We are concerned that if the Agency were to move to a rule that the entry level for attorneys is GS-9, it would be a major change and would make EPA a less attractive employer for students graduating from law school. In addition, the criteria added to otherwise meet a GS-11 is overly prescriptive and may not be achievable. Since OPM does not promulgate qualification requirements for attorneys, the ORCs do not understand where the additional requirements to qualify for GS-11 come from. The draft bulletin includes a supersession section, but it is not enlightening in this regard.**

It would have been helpful to be looped into this effort, especially if OECA and OGC don't have any concerns. We will send these to Loretta Hunt to convey our concerns unless you believe a different approach should be taken.

Thanks,

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**From:** Lattimore, Kraig <[lattimore.kraig@epa.gov](mailto:lattimore.kraig@epa.gov)>  
**Sent:** Tuesday, January 26, 2021 12:38 PM  
**To:** Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>; Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>  
**Subject:** RE: Excepted Service Draft Bulletin

That is correct. Thanks.

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**From:** Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>  
**Sent:** Tuesday, January 26, 2021 2:23 PM  
**To:** Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>  
**Cc:** Lattimore, Kraig <[lattimore.kraig@epa.gov](mailto:lattimore.kraig@epa.gov)>  
**Subject:** RE: Excepted Service Draft Bulletin

The GS-11 qualifications are fairly set and are consistent with DOJ/other federal agencies. This chart will be included. I think the bulletin is being finalized asap. A JD alone would not qualify a candidate for the GS-11 but I think our candidates would almost always meet the superior law student criteria. I'm including Kraig because he has more history with the qualifications.

Grade Level	Education/Training Requirements	Specialized Experience Requirement
9	J.D. degree or equivalent apprentice experience as allowed per state law	None required to qualify at this grade level
11	J.D. degree or equivalent apprentice experience as allowed per state law, and	Superior law student activities or one year of specialized experience
	Or an LL.M degree	None required to qualify at this grade level
12	J.D. degree or equivalent apprentice experience as allowed per state law or an LL.M degree, and	one year equivalent to the GS-11 level
13		one year equivalent to the GS-12 level
14		one year equivalent to the GS-13 level
15		one year equivalent to the GS-14 level

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**From:** Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>  
**Sent:** Tuesday, January 26, 2021 2:15 PM  
**To:** Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>  
**Subject:** RE: Excepted Service Draft Bulletin

Thanks Laura. I am finalizing comments from the ORCs. I will share them with you and Kraig. There are concerns about the GS-11 qualifications as well. The way we read the bulletin, GS-11's have to have one year experience.

Maybe we can talk about this today or tomorrow?

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**From:** Milton, Laura <[Milton.Laura@epa.gov](mailto:Milton.Laura@epa.gov)>  
**Sent:** Tuesday, January 26, 2021 12:09 PM  
**To:** Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>  
**Subject:** RE: Excepted Service Draft Bulletin

Just as an FYI, Kraig and I are working with OHR on some clarifying language but generally there's a need to include the GS-9 qualifications as that is the base level for new attorneys who don't meet the other qualifications but there's no assumption that we would do so. Classification is based on the Nature of the Work/Level of Responsibility and, based on those, our positions almost always start at the GS-11 and candidates almost always meet the requirements via superior law student activities which are very broad:

OR

Applicants who meet the GS-9 requirement and in addition have superior law student activities while earning a JD degree. Superior law student activities include:

- Academic standing in upper third of law school graduating class;
- Work or achievement of significance on law school's law review;
- Special high-level honors for academic excellence, such as election to Order of the Coif;
- Winning of a moot court competition or membership on the moot court team representing the law school in competition with other law schools;
- Full-time or continuous participation in a legal aid program or significant summer law office clerk experience; or

- Other equivalent evidence of clearly superior achievement, as determined by the hiring office and documented in writing for the case file.

There will be communication with both the PMO/RHRO community when this is finalized in the near future. It should not change any current agency practices.

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**Subject:** Excepted Service Draft Bulletin  
**Importance:** High

Mark and Elise,

I wanted to make sure you are aware of this draft bulletin. Most of the DRCs were unaware of it until yesterday. Region 7 passed it along. All the ORCs have concerns and several want to provide comments. Apparently, the bulletin was drafted on 12/14/20 and comments are due tomorrow. Are OECA and OGC planning to comment? If so, do you want any regional input? Preliminarily, ORCs were troubled by the following language Region 7 identified:

In Section XV(e)(2) there is language related to minimum grade specific levels for attorneys that is not consistent with our current practice which is to bring in new attorneys with a JD and have passed the bar at the GS11 level:

*(2) Attorneys*

*(i) To qualify at the GS-9 Grade level, applicants be duly licensed and authorized to practice as an attorney under the laws of any state, territory of the United States, or the District of Columbia, and be an active member of the bar in good standing.*

*(ii) To qualify at the GS-11 grade level, applicants must have an LL.M degree or at least one year of post J.D. legal experience with specialized experience at, or equivalent to, the GS-9 grade level. Examples of specialized experience include law clerk experience at the federal, state or local level, performing legal analysis and formulating recommendations to senior managers; composing pleadings, briefs, and other court documents involving legal issues in counseling or litigation.*

Thanks,

Elyana

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